

REMARKS

By the present amendment, Applicants have amended Claims 1, 8, 13, 16, 17 and 18, and cancelled Claims 2, 3 and 5. Claims 1, 4, 6 and 7-19 remain pending in the present application. Claims 1 and 17 are independent claims.

Applicants appreciate the courtesies extended to Applicants' representative during the personal interview held July 7, 2004. Present at the interview were Examiner B. Hayes and Attorney L. Babu. Prior to the interview a proposed amendment was presented to the Examiner for review. The present response summarizes the substance of the interview. Proposed Claim 1 incorporated the subject matter of Claims 2 and 3. Proposed Claim 17 more particularly defined the structure of the shaft. Arguments were advanced that the bird perch defined by the proposed claims was patentably distinguishable over the prior art of record. The Examiner withheld agreement as to the patentability of proposed Claims 1 and 17 pending determination as to amount of patentable weight, if any, attributable to the term "etched into." However, in a subsequent telephone conversation on July 15, 2004, the Examiner stated that the "etched into" language used in the proposed amended Claim 1 was functional and imparted no patentable weight. The Examiner suggested that the proposed claim be further amended to define the structural features of the cylindrical shaft and/or incorporate the subject matter of Claim 5 into Claim 1 to further define the abrasive coating material. Applicants appreciate the Examiner's helpful suggestions, which have been adopted by Applicants to the extent indicated by the present response.

In the recent Office Action, the Examiner rejected Claims 1-16 and 18 under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1, 3, 4 and 11 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,570,663 to Guarino. Claims 2, 5, 6, 10 and 12-19 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Guarino and claims 7 - 9 being unpatentable over Guarino in view of U.S. Patent No. 6,684,818 B2 to Willinger et al.

Claims 8, 16 and 18 were rejected as indefinite under 35 U.S.C. § 112, second paragraph. Applicants have made the appropriate changes to each claim in the interest of clarity. Applicants respectfully submit that the instant claims as amended meet the specific requirements of U.S.C. §112, second paragraph.

Applicants will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the application is respectfully requested.

Amended independent Claim 1 sets forth a therapeutic bird perch including a cylindrical shaft of unitary construction having two opposing ends. The shaft is further characterized as having a perching surface circumferentially extending between the opposing ends and a plurality of longitudinal grooves etched into the perching surface. The longitudinal grooves are defined as being disposed in an irregular pattern of parallel rows circumferentially encircling the entire perching surface to simulate a natural tree branch. The claimed perch further includes an abrasive coating disposed about a portion of the perching surface, and the abrasive coating is further defined as comprising a resin and sand.

Amended independent Claim 17 is directed towards a therapeutic bird ladder, comprising a pair of parallel poles and a plurality of rungs disposed between the parallel poles. Each of the rungs is defined as including: a cylindrical shaft of unitary construction having two opposing ends. The shaft has a perching surface circumferentially extending between the opposing ends and a plurality of longitudinal grooves etched into the perching surface. The longitudinal grooves are characterized as being disposed in an irregular pattern of parallel rows circumferentially encircling the entire perching surface to simulate a natural tree branch. The claimed bird ladder also includes an abrasive coating disposed about a portion of the perching surface, wherein the abrasive coating comprises a resin and sand.

The Examiner cited Guarino for disclosing "a perch 10 comprising: a shaft 11 having two opposing ends, the shaft 11 having a perching surface and a plurality of longitudinal groove 12

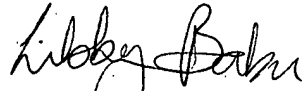
defined in the perching surface.” As stated by Applicants’ representative during the interview, the longitudinal groove cited by the examiner as reference number 12 actually refers to a recessed portion in the bottom face of the shaft, see column 1, line 55, and column 2, lines 1-8. The recessed portion is designed to receive a removably attachable abrasive insert. The area referred to by the Examiner as grooves 12 are not grooves but instead are indents made into the sides of the perch of Guarino. The two indents are opposite and parallel each other to provide footing for the bird’s toe so that only the abrasive material would abrade the bird’s toenail portion of the claw. The perch of Guarino is designed to allow the base of the foot to rest on a smooth perch, whereby the bird is allowed “to file its claws without injuring the feet, or the veins in the bird’s claws.” (Column 1, lines 16 – 18). In contrast, the present invention discloses a unitary cylindrical shaft with an irregular pattern of parallel rows circumferentially encircling the entire shaft. Clearly, the Guarino patent is a deficient as an anticipatory reference against independent Claim 1. Moreover, the primary reference to Guarino, taken alone or in combination with Willinger et al., is insufficient to render Claims 1, 4, 6 and 7-19 obvious within the meaning of 35 U.S.C. 103 since the prior art fails to reasonably suggest a bird perch having the combination of structural features as called for by the present claims. For at least these reasons, Applicants respectfully submit that independent Claims 1 and 17, as amended, and corresponding dependent Claims 4, 6, 7-16, 18 and 19.

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For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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